APPENDIX A

REPORT OF SPECIAL MASTER

In the United States Court of Appeals for the Sixth Circuit

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

UNITED MINE WORKERS OF AMERICA, and DISTRICT 30, UNITED MINE WORKERS OF AMERICA, *Respondents*

No. 14,226

REPORT OF SPECIAL MASTER

This cause, referred to me as special master on January 3, 1967 was heard, after due notice, on first meeting of the parties on February 28, 1967 in Greeneville, Tennessee. See Interim Report submitted on March 7, 1967. It was further heard to obtain oral and documentary evidence from witnesses made available by the parties and under the compelling process of the special master on June 1, 2, 5 and 6, 1967 in the courtroom of the United States District Court at Greeneville, Tennessee. See Second Interim Report submitted on June 23, 1967. The last of the suggestions from respective counsel for the petitioner and the respondents for proposed findings of fact and conclusions were received by the special master on November 1, 1967. The evidence and briefs of counsel having been considered, and the special master being fully advised, the following report and recommendations for findings of fact and conclusions of law herein are herewith respectfully submitted for the Court's consideration.

I
THE ISSUE

The issue presented is whether the respondents United Mine Workers of America and District 30, United Mine Workers of America, through their agents, and especially Messrs. C. E. Beane, Joseph Castle, Joseph Davis, Noble Hobbs, Walter Akers and J. D. Newberry, failed to comply with that part of the decree of this Court of May 20, 1960, which directed that the respondents and their officers, agents, successors and assigns not:

> "* * * Restrain and coerce employees * * * of any * * * employer engaged in coal mining operations or in processing, transporting and/or distributing coal within the geographical limits of the territorial jurisdiction of District 30, United Mine Workers of America * * * in the exercise of their rights guaranteed by Section 7 of the [National Labor Relations] Act, by engaging in and/or participating in conduct more fully described * * *" as:
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> > "* * * Exerting force or committing acts of force and violence against said employees, injuring the person or damaging the property of said employees by following them in superior numbers, using or threatening to use force or violence against said employees, assaulting employees, attempting to assault employees, threatening them with reprisals, barring their ingress to and egress from their places of employment, preventing them physically from working or in any other manner restraining or coercing them in the exercise of said rights. * * *"

II
FACTUAL NARRATIVE

Terry Elkhorn Mining Company, Inc.[1] was in 1966 an employer engaged in the mining, processing, selling

[1]Hereinafter referred to as Elkhorn.

and shipping of coal at and from locations in Floyd and Johnson Counties, Kentucky. This employer engaged in strip mining of coal at its Lick Branch mine, which was located approximately 1½ miles north of Prestonburg near the top of a mountain, and engaged in auger mining of coal at its Long Branch mine, which was located approximately 5½ miles north of Prestonburg. It also operated coal tipples at Sun Valley and Hagar Hill, which were located about three blocks apart and about 10 miles north of the mouth of its Lick Branch mine. All these operations were in the vicinage of U. S. highway route no. 23. Elkhorn also leased property at the village of Auxier from the Chesapeake & Ohio Railway Company, which property was located about four miles north of the mouth of the Lick Branch mine and about one mile west of the Auxier bridge, spanning the Big Sandy River, and had contracted with another employer, Mr. Marshall C. Mahan, to construct and operate in 1966 on a tonnage fee basis, a tipple on such property. All the coal mined by Elkhorn in 1966 at these mines was transported to the aforenamed tipples in trucks of other employers, Harry Wright Construction Company, Inc. and Billy Ray Howard,[2] processed, loaded into railroad gondola cars, and shipped. All but about ten per cent (10%) of such coal was shipped to points outside the Commonwealth of Kentucky.

The aforenamed employers' operations in the aforementioned area were within the geographical limits of the territorial jurisdiction of the respondent District 30, United Mine Workers of America. The collective bargaining agreements mentioned herein between employers

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[2]It is not clear whether Mr. Howard was an independent contractor or merely a driver, for whom another substituted, *infra*, for Harry Wright Construction Company, Inc.

in this industry of this area were between the respondent United Mine Workers of America and such employers. District 30, United Mine Workers of America is a non-autonomous subdivision, or provisional district, of its co-respondent United Mine Workers of America,[3] which governs it and provided 85% of its operational expense.

The aforenamed Mr. Beane served in 1966, by appointment of the president of UMW, as president of its District 30. The aforementioned Messrs. Hobbs, Castle and Davis served UMW in 1966 as field representatives. Each of those aforenamed immediately above had actual notice of the aforementioned decree. The aforementioned Mr. Akers, who served UMW in 1966 in a similar capacity, had constructive notice thereof. The aforenamed Mr. Newberry was a member in District 30 of UMW, resided near the Auxier tipple, and also had constructive notice *notice* of such decree.

Early in 1966 there were complaints by UMW members in the area that Elkhorn was operating with non-union labor, although some employees of Elkhorn and Mr. Mahan had by then joined the union. Messrs. Castle and Hobbs went into the area and investigated this report on March 31, 1966. From this beginning intensive and widespread strife developed. Varying pickets roved the area, after the arrival of agents of the respondent UMW on the scene, and after they had participated in such picketing. The picketing continued, as will be seen, even after the aforenamed Mr. Beane had advised against the action. As will be seen further hereinafter, the UMW pickets were not withdrawn by the respondent UMW until about a month after Mr. Beane had given his "advice". Once its representative Mr. Hobbs acted, however, there

[3]Referred to hereinafter as UMW.

was no further formal picketing, although violence both ante-dated and post-dated such withdrawal.

The following incidents, all in the calendar year 1966, occurred:

March 31:

The immediately aforenamed UMW field representatives met with about a dozen union members, pensioners and Elkhorn employees near the Auxier bridge and discussed organizing Elkhorn and its related operations. Subsequently, they went onto the aforesaid leased property. Several dozen men were assembled in the vicinity. Mr. Castle and Mr. Estill Newsome parked their automobiles in such a manner as to block the customary ingress to and egress from the tipple. Several trucks of Harry Wright Construction Company, Inc. were immobilized as a result. Mr. Mahan's request that Mr. Castle remove his vehicle was refused rudely.

The interruption in the steady flow of the trucks of the Wright company caused Mr. Charles Hovatter, Elkhorn's president and principal stockholder, to proceed from the Link Branch mine to the Auxier tipple to investigate. He also asked that the vehicles be moved and was met with inaction (although Mr. Castle subsequently moved his automobile). Messrs. Hovatter and Mahan decided to cause warrants of arrest to issue for Messrs. Newsome and Castle. As Mr. Mahan was noting the needed information from the pertinent license plates, Mr. Castle attempted unsuccessfully to jerk notebook and pencil from Mr. Mahan's hands. While the trucks were thus aligned, the drivers were solicited and joined the union. The pickets soon left the scene, but Mr. Mahan's employees refused to resume operation of the

[4]Referred to now as the Wright company.

tipple. After processing nine truckloads of coal himself, Mr. Mahan stopped operations for the day.

Mr. Hobbs and Mr. Newberry then proceeded to the Lick Branch mine area, parking at the bottom of the mountainside, where the mining operations were in progress. They conversed with a dozen or so men, including a few employees of Elkhorn, then walked into the mining area. At the request of the visitors, Elkhorn's foreman ceased operations while Elkhorn's employees there were solicited for UMW membership. It was pointed out by the organizers that Elkhorn's mines were the only ones in Floyd County which were unorganized. One picket stated to a heavy drilling equipment operator for Elkhorn there that the Link Branch mine "* * * would be organized even if it took bloodshed. * * *" Messrs. Castle, Hobbs and Newberry participated in the establishment of a picket line near the ingress to this mine.

April 2:

Operations at the tipple at Auxier were resumed and two shifts worked without interruption.

April 3:

A large number of pickets assembled near the Auxier tipple, with Kentucky state policemen and Messrs. Castle, Hobbs, Akers, Davis and Newberry present. Messrs. Akers and Davis urged Mr. Mahan to sign a contract with UMW. Mr. Castle then spoke with Mr. Mahan, advising that a few of Mr. Mahan's employees had signed UMW union cards and asked him to sign a union contract. Mr. Mahan refused. A conversation ensued between Mr. Hobbs and Mr. Mahan, in which Mr. Mahan requested the pickets to leave. Mr. Hobbs replied that organizing was his job, and that the effort would be made to organize the operation peacefully and lawfully.

Mr. Harry Wright was driving one of the trucks of the Wright company and was on this scene. Mr. Hobbs approached Mr. Wright and observed a pistol lying beside him on the seat of the truck. Mr. Hobbs then remarked: "* * * You're going to get in trouble. * * *" Mr. Akers also asked Mr. Wright to join the union. On seeing the pistol, Mr. Akers subsequently advised Mr. Wright that such "* * * isn't the right thing [sic: way] to do a thing. You could sign a card, and I believe these men could pay fellows a decent wage. * * *" Mr. Wright mentioned his economic obligations in declining union membership.

One of Mr. Mahan's employees had endeavored to move an empty gondola into position for loading at the tipple, but was prevented by pickets. Mr. Mahan then took a pinchbar and undertook to accomplish the task, but he was prevented by Mr. Hobbs from making the necessary uncoupling of the railroad cars involved. Mr. Mahan pushed Mr. Hobbs aside, and several dozen men surrounded the two as shoving continued. One such picket forcibly took the pinchbar from Mr. Mahan but returned it at the direction of Mr. Hobbs. More pushing followed, and one of the pickets asked Mr. Mahan "* * * how I would like it if he took the pinchbar and beat hell out of me." Mr. Mahan subsequently ducked under the gondola to attempt to move it from the opposite side of the tracks, but he was prevented from so doing by pickets. Operation of the tipple at Auxier was then again suspended, pending hearing on an application to a state court for an injunction. An agreement was reached, however, between Messrs. Hobbs and Mahan that the tipple might be operated long enough to permit unloading of the loaded trucks present. Some two dozen pickets remained on the scene while this was done. Activity then ceased. Sometime that day some of the pickets, assisted

by Messrs. Hobbs and Akers, gathered roofing nails which had been scattered earlier over areas normally traversed by the Wright company's trucks.

April 4:

Messrs. Castle and Newberry and about 100 pickets tried to persuade an Elkhorn foreman at its Hagar Hill tipple to stop operations. When the request was ignored or denied, Mr. Castle stated that "* * * someone would come after * * *" the foreman. Following more than an half-hour's interruption, Mr. Castle agreed that the foreman could complete the processing of coal on hand, but that he must cease thereafter and remain inoperative.

On or after this date, the Wright company's trucks were escorted in convoys by a pickup truck as Elkhorn's coal was transported. After speeding automobiles loaded with pickets began passing the convoys, while passengers therein displayed pistols, and sometimes interrupted the convoy lines, a second pickup truck was added for escort purposes.

April 5:

With large numbers of pickets present on the scene, including Messrs Akers and Hobbs, the tipple at Auxier did not undertake operations.

April 6:

From this date a sign bearing the legend "UMW of A Pickets" was prominently displayed daily near the ingress to the Lick Branch mine.

Mr. Wright was delivering coal from that mine to the tipple at Auxier when he was accosted by Mr. Akers: "Harry I don't want to see you hurt," the latter said, "I would like to see you park your truck[s]; I would appre-

ciate it if you pull them off and park them." Mr. Akers was on the picket line that day. As Mr. Wright departed in his truck, pickets nearby called out to him: "You had better park it. We are going to burn your trucks down, and we are going to burn your trailer and will also beat you down beside them."

April 7:

Operations were resumed at Auxier, but Mr. Mahan discontinued such for about three weeks, after his employees had advised him that they were frightened and were unable to do their work with so many men milling around in the tipple area.

April 8:

Mr. Akers was on the picket line near Lick Branch. Mr. Castle was also there and threw rocks at a truck Mr. Wright was driving, after which other pickets also threw rocks thereat.

April 9:

Mr. Castle and between 70 and 100 pickets came to the tipple at Sun Valley and talked with Elkhorn's employees for about an hour. The automobiles of Mr. Castle and another were parked under the tipple there. Kentucky state policemen refused to remove the pickets from the premises without a court order.

Mr. Beane held a meeting with some of those operating as roving pickets and others at the schoolhouse at Auxier and advised them to cease all picketing.

April 11:

Mr. Beane conducted a meeting of a larger group in Pikeville and again advised those assembled to discontinue all picketing.

Pickets were partially concealed behind parked automobiles near the entrance to the Lick Branch mine. As two drivers for the Wright company passed in a truck, the pickets threw rocks at it, breaking the glasses in its windshield and cab door and striking both employees. One such employee sustained facial injuries and required surgical excision of particles of glass from his eye.

A driver for Mr. Howard stopped at a filling station on the federal highway route at about this time to have a tire repaired. Almost simultaneously, Mr. Newberry brought his automobile there for repair of its brakes. Soon, about 25 additional pickets appeared on the scene, and one of them instructed this driver to dump his load of coal there. While the driver was in the process of following this mandate, a sledgehammer was thrown into the windshield of the truck. The driver leaped from its cab, whereupon two pickets grasped and held him while Mr. George Vaughn struck him on the head with a piece of 10-inch pipe. The pickets thereupon forced the driver back into the cab and told him to act more quickly in dumping the coal. Even as he complied, the pickets struck the windshield and side of the cab with the sledgehammer and a tiretool, resulting in a breaking of the windshield and the inflicting of lacerations on the driver's face from the flying glass. (During all this commotion Mr. Newberry, who was in the service-bay area of the filling station with the doors opened, disclaimed all knowledge of the incident and stated self-servingly to the attendant: "* * * Now, you know I didn't have nothing [sic] to do with this; I was right here with you. * * *") The truck was eventually removed from the scene, and the attendant removed the coal from his premises.

April 19:

About 20 from a group of some 200 pickets "hunkered down" farther down the hollow from the larger group near the ingress to the Lick Branch mine and attacked with rocks a truck driven by Mr. Wright's son. As Mr. Wright sought to investigate and intercede, and as he was alighting from a following truck, he was struck in the area of his right kidney by a large rock and was knocked to the ground. When he recovered sufficiently to re-enter the cab, a picket, who was holding UMW union membership application cards in his hand, approached and said: "* * * Now G-- d--- you; will you sign one now? * * *" A steel ball-bearing was found lodged in the window glass of the cab of Mr. Wright's truck, and a slingshot was discovered nearby. Subsequently, Mr. Wright was hospitalized because of injuries he received in this attack. He has been unable to drive a truck since.

April 20:

After a rapidly-accelerating automobile was observed departing the area of the coal hopper thereat, the tipple at Sun Valley was discovered to be afire. The remnants of a so-called "Molotov cocktail" were found in the coal hopper.

Mr. Newberry issued a call by spot announcements on a local radio station for a meeting of all members of "* * * UMWA, District 30 * * *" on the following day near Prestonburg.

April 21:

An estimated 500 pickets and other persons met at a point near Prestonburg with Mr. Newberry present. (This, despite the fact that Mr. Newberry claims that such meeting was cancelled when "* * * there wasn't

[sic] but one or two there [sic] of the boys showed up * * *.")

A truck of the Wright company hauling coal to the tipple at Hagar Hill stopped for tire repairs at the aforementioned filling station. While Mr. Newberry was present, the coal was dumped by pickets from the truck, and its windshield and window glasses were broken. A hole was also knocked in its side.

May 6:

Mr. Newberry and approximately 100 other pickets were "heckling" the nightwatchman at the tipple at Auxier. Mrs. Mahan accompanied her husband to the scene and remained in their automobile while Mr. Mahan moved a gondola so that light from the tipple would illuminate the watchman's automobile. In his absence therefrom, the Mahan vehicle was rocked from side to side by the pickets. As Mr. Newberry stood nearby, another picket shouted to Mr. Mahan: "* * * You don't have to worry about getting a watchman for your tipple tonight; because we are going to have some women that are going to come down and take care of the watchman, and [during that time] we are going to take care of the tipple. * * *" Mr. Newberry interjected the admonition: "You mustn't talk like that; don't say things like that. I'll guarantee that the tipple will not operate tomorrow, but, don't say things like that." Shirley Hayden was standing with the same group and added: "Well, I'll see that the tipple doesn't operate, because I have the kerosene." Whereupon, another picket added, "I have the match", and yet another said: "If that doesn't work, I have the dynamite." Mrs. Mahan then overheard someone in the group call to Mr. Mahan: "Before I die I'm going to kill you."

Latter part of April:

Someone in an assemblage of pickets at Auxier shot a firearm at Mr. Mahan's watchman and tossed firecrackers and rocks in his direction from the undergrowth nearby. Mr. Mahan added a second nightwatchman, and these two were advised by an assemblage of 100 to 175 women to "* * * go home. * * *" When the latter incident was reported to Mr. Mahan, he released the watchmen from such duty.

Late April, early May:

Pickets undertook to cause convoys of the Wright company to slow down the movement of coal and empty trucks by means of vehicles. When the trucks were accelerated to effectuate passing, the automobiles were accelerated more. On one occasion, a picket waved a stick of dynamite out of the window of one of the vehicles. On other occasions, the mobile pickets shouted to the drivers by name with threats, such as: "* * * We are going to stop you one way or another; we will get you next time. * * *"

March 31 through May 10:

Pickets cursed Elkhorn's employees at its Lick Branch mine, called them "scabs", "yellow dogs", and strikebreakers", and threatened them with bodily harm if they continued to work. They also placed mine-rail spikes, welded onto roof-bolt washers, into water holes in the roadway of the ingress and egress to the mine.

May 10:

After a visit to the picket line at Lick Branch by Mr. Hobbs, all those assembled, except one picket, departed the scene behind the Hobbs vehicle. A Kentucky state policeman was then advised by a picket that the picket-

ing would be halted. Neither the pickets nor the aforementioned sign were afterward observed there.

May 17:

This was the second day of renewed operations of the tipple at Auxier. Although only a very few pickets were present, a host of women and children of school age blocked the ingress and egress of trucks of the Wright company and the egress of the Mahan vehicle. The latter was finally moved, only with the help of Kentucky state policemen. This tipple, having been rendered inoperable for about two-thirds of the time since March 31, was closed down permanently.

Late May:

Employees of Mr. Mahan, on inspection of the tipple at Auxier, discovered that several holes had been burned in the ramp and extensive damage had been done to the crusher and toolshed, which the inspector concluded, as to the latter, could have resulted only from an explosion. About a week afterward, further inspection revealed that the crusher had been torn off its foundation, the coal-feeder had been torn out, and a motor had burst, probably as a result of a further explosion.

III

RECOMMENDATIONS FOR FINDINGS OF FACT BY THE COURT

At all times pertinent to this proceeding:

(a) Elkhorn, the Wright company and Mr. Mahan were engaged in operations affecting interstate commerce within the meaning of the National Labor Relations Act, 28 U. S. C. §§ 152 (6) and (7).

(b) The respondents UMW and District 30, UMW, and the aforenamed Messrs. Beane, Castle, Davis, Hobbs, Akers and Newberry clearly, unequivocally and convincingly participated, or were interested, in the aforementioned labor dispute, and as agents of the respondent United Mine Workers of America, committed, or constructively ratified, unlawful acts within the meaning of the Norris-LaGuardia Act, 29 U. S. C. § 106.

(c) The respondent UMW, through the aforementioned agents, violated this Court's decree of May 20, 1960, within the jurisdiction of this Court, by: committing acts of violence upon, physically assaulting and threatening with violence employees of Elkhorn, the Wright company and Mr. Mahan; causing physical injury to some of the said employees; inflicting considerable damage to properties of the aforenamed employers; following the said employees in superior numbers; attempting to bar and barring the ingress to and egress from such employees' places of employment; attempting to and physically preventing such employees' working; and, by restraining and coercing such employees in the exercise of rights guaranteed them by 29 U. S. C. § 157.

(d) The aforesaid acts of disobedience of this Court's said decree and the law all occurred prior to July 8, 1966, the date of the petitioner's filing of an application to have the respondents adjudged in civil contempt.

IV

RECOMMENDATIONS FOR CONCLUSIONS OF LAW BY THE COURT

(a) It is an unfair labor practice for agents of a labor organization to restrain or coerce employees of employers, as defined by 29 U. S. C. §§ 152 (6) and (7), in the

exercise of such employees' rights to refrain from exercising their rights of self-organization, of forming, joining or assisting labor organizations, and of bargaining collectively or for other mutual aid or protection. 29 U. S. C. § 158 (b) (1) (A).

(b) The aforementioned decree of this Court laid upon the respondent UMW a duty to obey the aforementioned proscription of 29 U. S. C. § 158 (b) (1) (A). *Cf. McComb v. Jacksonville Paper Co.*, 336 U. S. 187, 191-192 (headnote 4) (1949).

(c) The substantive standard against which the conduct of the aforenamed agents of the respondent United Mine Workers of America is measured is the statutory standard of 29 U. S. C. § 158 (b) (1) (A).

(d) This proceeding in contempt is a part of the original action. *Gompers* v. *Buck's Stove and R. Co.*, 221 U. S. 418, 446 (1911).

(e) Absence of the element of willfulness on the part of the respondent UMW does not relieve such respondent of guilt of civil contempt of this Court. *McComb* v. *Jacksonville Paper Co., supra,* 336 U. S. at 191 (headnote 1); see also *United States* v. *United Mine Workers of America,* 330 U. S. 258, 303-304 (1947) and *Penfield Co.* v. *Securities & Exch. Com.*, 330 U. S. 585, 590 (1947).

(f) The proof against the aforenamed agents of the respondent United Mine Workers of America of the aforementioned violations met the requisite modicums of establishment by clear and convincing evidence fixed in *Kansas City Power & Light Co.* v. *National L. R. Board,* 137 F.2d 77, 79 [1] (C.A. 8, 1943); *N. L. R. B.* v. *Local 5881, United Mine Workers of America,* 323 F.2d 853, 854 (C.A. 6, 1963); *National Labor Relations Bd.* v. *Tupelo*

Garment Co., 122 F.2d 603, 606 [2] (C.A. 5, 1941); *Oriel* v. *Russell*, 278 U. S. 358, 364 (1929); *California, Etc. Stone Paving Co.* v. *Molitar*, 113 U. S. 609, 618 (1885); and *National Labor Relations Board* v. *Standard Trouser Co.*, 162 F.2d 1012, 1014 [1] (C.A. 4, 1947).

(g) "Clear and convincing evidence" is "something more than a bare preponderance of evidence." *Kansas City Power & Light Co.* v. *National Labor Relations Board, supra*, 137 F.2d at 79; *National Labor Relations Board* v. *Tupelo Garment Co., supra*, 122 F.2d at 606.

(h) Every order granting an injunction is binding upon the parties to the action, their agents, and those persons in active concert or participation with them who receive actual notice of the order. Rule 65 (d), Federal Rules of Civil Procedure. The scope of this Court's enforcement order of May 20, 1960 is limited by the rule cited immediately hereinabove. *Regal Knitwear Company* v. *National Labor Relations Board*, 324 U. S. 9, 13 (headnote 4) (1945). The aforenamed Messrs. Akers and Newberry were not personally bound by such order.

(i) "* * * The actions of one individual member no more bind the union than they bind another member unless there is proof that the union authorized or ratified the acts in question. * * *" *United States* v. *White*, 322 U. S. 694, 702 (1944); see 31 Am. Jur., —, Labor, §§ 135 et seq.: see also 100 A. L. R. 2d 694, 702. The evidence must be sufficient to support a finding that the respondent knowingly disobeyed the Court's order, *United States* v. *Hall*, 198 F.2d 726, 729 (C.A. 2, 1952), and that the contemnor had knowledge of the order. 18 U. S. C. § 401 (3); *Kelton* v. *United States*, 294 F. 491, 494-495 [5] (C.C.A. 3, 1923). However, the direct knowledge of the respondent UMW of the aforementioned decree was

imputed to its aforenamed agents, in so far as is concerned the liability of such respondent for the violative acts of Messrs. Newberry and Akers, to each of whom such respondent neglected to communicate such direct knowledge. *Holly* v. *Manuf'g Co.* v. *New Chester Water Co.*, 48 F. 879, 889 (D.C.Pa., 1891); *Sawyer* v. *Mid-Continent Petroleum Corp.*, 236 F.2d 518, 520 [1] (C.A. 10, 1956).

(j) Only ordinary evidence was required to establish the authority of the aforenamed individuals to act as agents of the respondent UMW in performing their respective specific acts, *supra.* 29 U.S.C. §152 (13); House Conference Report No. 510 on H. R. 3020, 80th Congress, 1st Session, 36 (1947). As has been recently said:

"* * * Although the statute does not define 'clear proof', its history and rationale suggest that Congress meant at least to signify a meaning like that commonly accorded such similar phrases as 'clear, unequivocable, and convincing proof'. Under this standard, the plaintiff in a civil case is not required to satisfy the criminal standard of reasonable doubt on the issue of participation, authorization or ratification; neither may he prevail by meeting the ordinary civil burden of persuasion. He is required to persuade by a substantial margin, to come forward with 'more than a bare preponderance of the evidence to prevail.' * * *" *United Mine Workers* v. *Gibbs*, 383 U. S. 715, 737 [15] (1966). "* * * What is required is proof, either that the union approved the violence which occurred, or that it participated actively or by knowing tolerance in further acts which were in themselves actionable under state law or intentionally drew upon the previous violence for their force. * * *" *Ibid.*, 383 U. S. at 739 [17]. "* * * The relevant question

* * * is whether [the union's agents] * * * or other UMW representatives were clearly shown to have endorsed violence or threats of violence as a means of settling the dispute. * * *" *Ibid.*, 383 U. S. at 741 [17].

(k) The respondent District 30, UMW and the respondent UMW comprised the same legal entity. *United Mine Workers of America* v. *Osborne Mining Co.*, 279 F.2d 716, 725 [8] (C.A. 6, 1960), cert. den. 364 U. S. 881 (1960).

(l) The respondent UMW was vicariously responsible for the aforementioned acts of its aforenamed field representatives and Mr. Beane, all which were in the course and scope of their respective employments. *United Mine Workers of America* v. *Patton*, 211 F.2d 742, 746 [2] and cases there cited (C.A. 4, 1954).

(m) The contention of the respondents that the "* * * purpose of a civil contempt proceeding is not as a deterrent to offenses against the public or to vindicate the authority of the Court * * *", and their further contention that a proceeding in civil contempt is wholly remedial and "* * * is to serve only the purposes of the complainant * * *", have no foundation in the cases cited in support thereof, *viz.*, *Penfield, supra; McCrone* v. *United States*, 307 U. S. 61, 64 (1939); and *Gompers, infra.* In the latter opinion, the late Mr. Justice Lamar wrote: "* * * When the main case was settled, every proceeding which was dependent on it, or a part of it, was also necessarily settled, of course, *without prejudice to the power and right of the court to punish for contempt by proper proceedings.* * * *" *Gompers* v. *Buck's Stove & R. Co., supra*, 221 U. S. at 451 [emphasis supplied].

* * * * *

"* * * The dual function of contempt has long been recognized—(1) vindication of the public interest by punishment of contemptuous conduct; (2) coercion to compel the contemnor to do what the law requires of him. * * * 'The purpose of contempt proceedings is to uphold the power of the court and also to secure to suitors therein the rights by it awarded.' * * *" *Penfield* v. *Securities & Exch. Comm., supra,* 330 U. S. at 593.

Counsel evidently seek to re-fashion a "rule of law" which would serve to succor the interests of their clients by rearranging the following language of Mr. Justice Black, whereby, in distinguishing criminal contempt from civil contempt, he defined civil contempt as being: "* * * when the punishment is wholly remedial, serves only the purposes of the complainant, and is not intended as a deterrent to offenses against the public. * * *" *McCrone* v. *United States, supra,* 307 U. S. at 64.

(n) The various acts of misconduct attributed to the aforenamed individuals, excepting Mr. Beane, manifestly violated this Court's order of May 20, 1960 and 29 U. S. C. §158 (b). (1) (A). *Cf. National Labor Relations Board* v. *Local 5881, United Mine Workers of America, supra,* 323 F.2d at 961-962; *National Labor Relations Bd.* v. *United Mine Workers,* 195 F.2d 961-961-962 (C.A. 6, 1952), cert. den. 344 U. S. 920 (1953); *National Labor Relations Board* v. *United Mine Workers,* 202 F.2d 177, 179 (C.A. 3, 1953); *National Labor Relations Bd.* v. *United Mine Workers,* 190 F.2d 251, 252 (C.A. 4, 1951); *National Labor Relations Bd.* v. *United Mine Workers,* 198 F.2d 389, 390-391 (C.A. 4, 1952), cert. den. 344 U.S. 884 (1952); *Highway Truck Drivers and Helpers, Local 107 IBT* v. *National Labor Relations Board,* 273 F.2d 815, 818 (C.A.D.C., 1959), even where under these circumstances

such conduct occurred outside the presence of the aforementioned employees or was directed against non-employees. *United Mine Workers of America* v. *Osborne Mining Co., supra,* 279 F.2d at 725.

(o) Threats, intimidation and coercion do not escape the pale of illegality because they did not prevent some persistent employees from working. *Progressive Mine Workers* v. *National Labor Rel. Bd.,* 187 F.2d 298, 301 [3] (C.A. 7, 1951); see also *National Labor Relations Board* v. *Ford Bros.,* 170 F.2d 735 (C.A. 6, 1948).

(p) This Court's decree of May 20, 1960 was a command to Mr. Beane, who was officially responsible for the conduct of the affairs of the respondent UMW in its District 30. He was apprised of the writ directed to the respondents and failed to take appropriate action within his power to inspire the performance of the union's duty thereunder. Consequently, he, no less than the union itself, is guilty of disobedience and will be punished for contempt. *Parker* v. *United States,* 126 F.2d 370, 379 [11] (C.A. 1, 1942); see also *Wilson* v. *United States,* 221 U.S. 361, 376 (1911).

(q) The other aforenamed individuals instigated unlawful conduct on the part of other persons, and each is liable for the actions of those whom he induced to act unlawfully. *International B. of E. W.* v. *National L. R. Bd.,* 341 U. S. 694, 701, 703 (1951), affirming 181 F.2d 34, 38-39 (C.A. 2, 1950). A person is chargeable for the "* * * foreseeable consequences of his conduct. * * *" *Radio Officer's Union* v. *N. L. R. B.,* 347 U. S. 17, 45 (1954).

(r) Costs are imposed against the respondent UMW, including the expenses necessarily incurred by the petitioner National Labor Relations Board in connection with

the prosecution of this petition in civil contempt, its investigation, preparation, presentation and the final disposition hereof. *National Labor Relations Board* v. *Local 5881, United Mine Workers of America, supra; cf. National Labor Relations Board* v. *Star Metal Manufacturing Co.*, 187 F.2d 856, 857 [1] (C.A. 3, 1951); *National Labor Relations Board* v. *Nesen*, 211 F.2d 559, 564 [6] (4) (C.A. 9, 1954), cert. den. 348 U.S. 820 (1954).

V

The special master has not, as permitted by the order of reference herein, submitted a draft hereof to counsel for the parties for the purpose of receiving their suggestions, but a copy hereof is being served herewith upon leading counsel for the parties.

With this report are filed the transcript of the prosceedings held before, and of the evidence received by, the special master, as well as a motion to correct same. Neither the petitioner nor the respondent offered for the record any evidence excluded by ruling of the special master, although full opportunity so to do was accorded the parties by the special master.

The special master hereby waives all compensation for services, and he incurred no expenses in connection therewith.

Respectfully submitted,

C. G. Neese
Special Master

APPENDIX B

OPINION OF THE SIXTH CIRCUIT

Filed Apr. 18, 1968—Carl W. Reuss, Clerk

No. 14226

United States Court of Appeals

FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
UNITED MINE WORKERS OF AMERICA, AND DISTRICT 30, UNITED MINE WORKERS OF AMERICA,
Respondents.

ON PETITION of the National Labor Relations Board for Adjudication in Civil Contempt.

Decided April 18, 1968.

Before WEICK, Chief Judge, and PHILLIPS and EDWARDS, Circuit Judges.

PER CURIAM. The National Labor Relations Board filed a petition to adjudge in civil contempt United Mine Workers of America, District 30 United Mine Workers of America and their agents, C. E. Beane, Joseph Castle, Joseph Davis, Noble Hobbs, Walter Akers and J. D. Newberry, in that said respondents failed and refused to comply with the decree of this Court of May 20, 1960. Said decree directed that respondents and their officers, agents, successors and assigns, not:

". . . Restrain and coerce employees . . . of any . . . employer engaged in coal mining operations or in processing, transporting and/or distributing coal within the geographical limits of the territorial jurisdiction of District 30, United Mine Workers of America . . . in the exercise of their rights guaranteed by Section 7 of the [National Labor Relations] Act, by engaging in and/or participating in conduct more fully described . . . as:

". . . Exerting force or committing acts of force and violence against said employees, injuring the person or damaging the property of said employees by following them in superior numbers, using or threatening to use force or violence against said employees, assaulting employees, attempting to assault employees, threatening them with reprisals, barring their ingress to and egress from their places of employment, preventing them physically from working or in any other manner restraining or coercing them in the exercise of said rights. . . ."

Respondents filed answers denying that they have disobeyed the decree.

After hearing oral arguments on the petition and answers, this Court entered an order of reference on January 3, 1967, appointing the Honorable Charles G. Neese, United States District Judge for the Eastern District of Tennessee, as Special Master to hear evidence and report to the Court whether respondents were in civil contempt for violating, disobeying and failing and refusing to comply with the Court's decree.

The Special Master filed a comprehensive report under date of December 5, 1967, containing detailed findings of fact to the effect that: the United Mine Workers of America and District 30 comprise the same legal entity;

that the named individual respondents were agents of the United Mine Workers of America; that Castle, Davis, Hobbs, Akers and Newberry committed various acts of misconduct which manifestly violated this Court's decree of May 20, 1960, and instigated such unlawful conduct on the part of other persons; that Beane, Castle, Davis and Hobbs had actual notice of this Court's 1960 decree and were personally bound thereby; that Akers and Newberry had constructive notice of the 1960 decree, but were not personally bound thereby; that Castle, Davis and Hobbs are liable in civil contempt for their own unlawful activities as well as for the acts of those persons whom they induced to act unlawfully; that Beane was officially responsible for the contumacious conduct of Castle, Davis, Hobbs, Akers and Newberry, and as such is guilty of disobedience and in contempt of this Court's decree; and that the United Mine Workers of America was responsible for the contumacious acts of Beane, Castle, Davis and Hobbs, as well as those of Akers and Newberry, and should be adjudged in civil contempt therefor. The Special Master recommended that said respondents, except Akers and Newberry, and each of them be adjudged in civil contempt of the decree of this Court and that they be required to purge themselves thereof.

Under date of December 21, 1967, the Board filed proposed corrections to certain details in the report of the Special Master not involving any material finding of fact. Under date of December 26, 1967, respondents filed objections to the report. Briefs have been filed by the Board in support of the report and by respondents in opposition thereto.

Upon consideration of the briefs and objections of the parties and the entire record, we conclude that the findings of fact contained in the report of the Special Master should be modified and corrected in the particulars set forth in the proposed corrections filed by the Board under date of December 21, 1967, and that said findings of fact, as modified and corrected, should be approved and confirmed in all respects. We hold that said findings of fact are supported by substantial evidence on the record considered as a whole. It is to be emphasized that this case does not involve permissible peaceful picketing, but to the contrary impermissible violent mass picketing, coercion of employees, unlawful acts, injuries to persons and damage to property, which were prohibited by the order of the Board enforced by the decree of this Court.

The following order will be entered:

The National Labor Relations Board having filed a petition to adjudge in civil contempt United Mine Workers of America, District 30 United Mine Workers of America and their agents C. E. Beane, Joseph Davis, Noble Hobbs, Walter Akers and J. D. Newberry in that said respondents failed and refused to comply with the decree of May 20, 1960; and respondents having filed their answers denying that they have disobeyed the decree; and United States District Judge Charles G. Neese having as Special Master rendered a report recommending that said respondents, except said Walter Akers and J. D. Newberry, and each of them be adjudged in civil contempt of the decree and that they be required to purge themselves thereof;

It is upon all the proceedings heretofore had herein ORDERED that the findings of fact set forth in the

report of the Special Master dated and filed December 5, 1967, be modified and corrected in the particulars set forth in the proposed corrections filed by the Board under date of December 21, 1967, and that said findings of fact, as modified and corrected, be and the same hereby are approved and confirmed in all respects.

It is further ORDERED that United Mine Workers of America, District 30, United Mine Workers of America, C. E. Beane, Joseph Castle, Joseph Davis and Noble Hobbs are hereby adjudged in civil contempt of the Court's above-mentioned decree.

It is further ORDERED that respondents, their officers, representatives, agents, successors and assigns shall forthwith purge themselves of such contempt by:

1. Ceasing and desisting from:

   (a) Restraining and coercing employees of Terry Elkhorn Mining Co., Inc., Mahan Coal Co., and Harry Wright Construction Company, Inc., or of any other employers engaged in coal mining operations or in processing, transporting or distributing coal within the geographical limits of the territorial jurisdiction of District 30, United Mine Workers of America, to wit—all of the Commonwealth of Kentucky east of a line drawn directly north and south from Louisville, Kentucky, excepting the counties of Pulaski, Wayne, McCreary, Whitley, Laurel, Knox, Bell, Marian, Clay, Owsley, Jackson, Harlan and Rockcastle and certain parts of Leslie County and Pike County—in the exercise of their rights guaranteed them by Section 7 of the National Labor Relations Act; by exerting force or committing acts of force or violence against said employees; injuring the person of said employees; damaging the property of said employees; threatening said employees by following them in superior numbers; using or threatening to use force or violence against said employees;

assaulting or attempting to assault said employees; threatening said employees with reprisals; barring said employees' ingress to and egress from their places of employment; preventing said employees physically from working; in any other manner restraining or coercing said employees in the exercise of said rights; and

(b) Violating in any other manner this Court's decree of May 20, 1960; provided, however, that this order shall not be construed as prohibiting lawful and peaceful picketing.

2. Taking the following affirmative action in purgation:

(a) Immediately post in conspicuous places, at District 30's business offices and meeting places in Pikeville and Hazard, Kentucky, and at all places where meetings of members of United Mine Workers of America Local Unions within said geographical limits and jurisdiction of District 30 are held and conducted, for a period of sixty (60) consecutive days, copies of an appropriate notice, with this order annexed, prepared by the Board and furnished to respondents, signed by an officer of the United Mine Workers of America and signed by each of the individual respondents, which states that the respondents have been adjudicated in civil contempt of Court for violating, disobeying, failing, and refusing to comply with the Court's said decree, and that they will undertake forthwith appropriate action in purgation, such notices and copy of this order to be maintained in clearly legible condition throughout such posting period, and insure that they are not altered, defaced or covered by any other material;

(b) Provide to each of said Local Unions for distribution to each of its members, copies of the signed notice, with this order annexed, as set forth in paragraph (a);

(c) Jointly and severally pay to petitioner as court costs all costs incurred in the investigation, prepara-

tion, presentation and final disposition of this proceeding to adjudge respondents in civil contempt, said amount to be fixed by further order of the Court upon service and submission by the Board of a statement of its costs; and

(d) File a sworn statement with the Regional Director of the Board's Ninth Region, within ten (10) days after the entry of the order of adjudication and again at the end of the sixty (60) day period provided in paragraph (a) above, showing what steps have been taken by respondents to comply with this order.

It is further ORDERED that to insure compliance with the foregoing provisions, upon a failure of United Mine Workers of America and District 30 United Mine Workers of America, or either of them, to purge themselves of contempt as herein provided, this Court hereby imposes a compliance fine of $25,000 and a further compliance fine of $1,000 per day on each of said respondents so long as such non-compliance continues; and in the event C. E. Beane, Joseph Castle, Joseph Davis or Noble Hobbs violates said decree or this order in the future, that each pay a fine of $5,000 or be confined to jail for a period of 30 days for each such violation.

Said compliance fines and penalties shall be imposed only in the event that respondents fail, after the entry of this order, to purge themselves of contempt as herein directed.

It is further ORDERED that in the event of future violations the Court will deal further with the matter by such other means as the Court shall then deem appropriate, including the issuance of a body attachment against any individual responsible for non-compliance or against any officer or agent responsible for non-compliance of the Union respondents.

APPENDIX C

FINAL JUDGMENT

Filed Apr. 18, 1968, Carl W. Reuss, Clerk

No. 14,226

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

UNITED MINE WORKERS OF AMERICA, and DISTRICT 30, UNITED MINE WORKERS OF AMERICA,
Respondents.

} ORDER

BEFORE: WEICK, Chief Judge, PHILLIPS and EDWARDS, Circuit Judges.

The National Labor Relations Board having filed a petition to adjudge in civil contempt United Mine Workers of America, District 30 United Mine Workers of America and their agents C. E. Beane, Joseph Davis, Noble Hobbs, Walter Akers and J. D. Newberry in that said respondents failed and refused to comply with the decree of May 20, 1960; and respondents having filed their answers denying that they have disobeyed the decree; and United States District Judge Charles G. Neese having as Special Master rendered a report recommending that said respondents, except said Walter Akers

and J. D. Newberry, and each of them be adjudged in civil contempt of the decree and that they be required to purge themselves thereof;

It is upon all the proceedings heretofore had herein ORDERED that the findings of fact set forth in the report of the Special Master dated and filed December 5, 1967, be modified and corrected in the particulars set forth in the proposed corrections filed by the Board under date of December 21, 1967, and that said findings of fact, as modified and corrected, be and the same hereby are approved and confirmed in all respects.

It is further ORDERED that United Mine Workers of America, District 30, United Mine Workers of America, C. E. Beane, Joseph Castle, Joseph Davis and Noble Hobbs are hereby adjudged in civil contempt of the Court's above-mentioned decree.

It is further ORDERED that respondents, their officers, representatives, agents, successors and assigns shall forthwith purge themselves of such contempt by:

1. Ceasing and desisting from:

   (a) Restraining and coercing employees of Terry Elkhorn Mining Co., Inc., Mahan Coal Co., and Harry Wright Construction Company, Inc., or of any other employers engaged in coal mining operations or in processing, transporting or distributing coal within the geographical limits of the territorial jurisdiction of District 30, United Mine Workers of America, to wit—all of the Commonwealth of Kentucky east of a line drawn directly north and south from Louisville, Kentucky, excepting the counties of Pulaski, Wayne, McCreary, Whitley, Laurel, Knox, Bell, Marian, Clay, Owsley, Jackson, Harlan and Rockcastle and certain parts of Leslie County and Pike County—in the exercise of their rights guaranteed them by Section 7 of the National Labor Relations

Act; by exerting force or committing acts of force or violence against said employees; injuring the person of said employees; damaging the property of said employees; threatening said employees by following them in superior numbers; using or threatening to use force or violence against said employees; assaulting or attempting to assault said employees; threatening said employees with reprisals; barring said employees' ingress to and egress from their places of employment; preventing said employees physically from working; in any other manner restraining or coercing said employees in the exercise of said rights; and

(b) Violating in any other manner this Court's decree of May 20, 1960; provided, however, that this order shall not be construed as prohibiting lawful and peaceful picketing.

2. Taking the following affirmative action in purgation:

(a) Immediately post in conspicuous places, at District 30's business offices and meeting places in Pikeville and Hazard, Kentucky, and at all places where meetings of members of United Mine Workers of America Local Unions within said geographical limits and jurisdiction of District 30 are held and conducted, for a period of sixty (60) consecutive days, copies of an appropriate notice, with this order annexed, prepared by the Board and furnished to respondents, signed by an officer of the United Mine Workers of America and signed by each of the individual respondents, which states that the respondents have been adjudicated in civil contempt of Court for violating, disobeying, failing, and refusing to comply with the Court's said decree, and that they will undertake forthwith appropriate action in purgation, such notices and copy of this order to be maintained in clearly legible condition throughout such posting period, and insure that they are not altered, defaced or covered by any other material;

(b) Provide to each of said Local Unions for distribution to each of its members, copies of the signed notice, with this order annexed, as set forth in paragraph (a);

(c) Jointly and severally pay to petitioner as court costs all costs incurred in the investigation, preparation, presentation and final disposition of this proceeding to adjudge respondents in civil contempt, said amount to be fixed by further order of the Court upon service and submission by the Board of a statement of its costs; and

(d) File a sworn statement with the Regional Director of the Board's Ninth Region, within ten (10) days after the entry of the order of adjudication and again at the end of the sixty (60) day period provided in paragraph (a) above, showing what steps have been taken by respondents to comply with this order.

It is further ORDERED that to insure compliance with the foregoing provisions, upon a failure of United Mine Workers of America and District 30 United Mine Workers of America, or either of them, to purge themselves of contempt as herein provided, this Court hereby imposes a compliance fine of $25,000 and a further compliance fine of $1,000 per day on each of said respondents so long as such non-compliance continues; and in the event C. E. Beane, Joseph Castle, Joseph Davis or Noble Hobbs violates said decree or this order in the future, that each pay a fine of $5,000 or be confined to jail for a period of 30 days for each such violation.

Said compliance fines and penalties shall be imposed only in the event that respondents fail, after the entry of this order, to purge themselves of contempt as herein directed.

It is further ORDERED that in the event of future violations the Court will deal further with the matter by such other means as the Court shall then deem appropriate, including the issuance of a body attachment against any individual responsible for non-compliance or against any officer or agent responsible for non-compliance of the Union respondents.

Entered by order of the Court.

CARL W. REUSS,
Clerk.

APPENDIX D

Decree of the United States Court of Appeals for the Sixth Circuit, Dated May 20, 1960

The pertinent provisions of the Decree of the United States Court of Appeals for the Sixth Circuit, dated May 20, 1960, as set forth in the Petition for Adjudication in Civil Contempt and Other Civil Relief (R. 4), filed by the NLRB and admitted by Petitioners (R. 9, 10), reads as follows:

* * * * *

"1. Shall not:

"B. Restrain and coerce employees . . . of any . . . employer engaged in coal mining operations or in processing, transporting and/or distributing coal within the geographical limits of the territorial jurisdiction of District 30, United Mine Workers of America . . . in the exercise of their rights guaranteed them by Section 7 of the Act, by engaging in and/or participating in conduct more fully described below:

"(a) Exerting force or committing acts of force and violence against said employees, injuring the person or damaging the property of said employees, threatening said employees by following them in superior numbers, using or threatening to use force or violence against said employees, assaulting employees, attempting to assault employees, threatening them with reprisals, barring their ingress to and egress from their places of employment, preventing them physically from working or in any other manner restraining or coercing them in the exercise of said rights."

* * * * *

APPENDIX E

ORDERS OF THE SIXTH CIRCUIT

Filed October 7, 1966

No. 14,226

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, *Petitioner* vs: UNITED MINE WORKERS OF AMERICA, AND DISTRICT 30, UNITED MINE WORKERS OF AMERICA, *Respondents*	ORDER On Motion to Dismiss Petition for Adjudication In Civil Contempt

Before WEICK, Chief Judge, PHILLIPS and EDWARDS, Circuit Judges.

The decree of this Court entered on May 20, 1960, enforces a broad order of the Board, but the Union consented to it. A similar order of the Board was upheld by the Supreme Court in *NLRB* v. *Ochoa Fertilizer Corp.*, 368 U.S. 318.

The petition for an adjudication in civil contempt alleges conduct on the part of the Respondents which, if true, was proscribed by the Board's order.

The motion to discharge and vacate is therefore denied and the Respondents are hereby ordered to make answer to said petition in the manner heretofore ordered by this

Court in the Order to Show Cause, on or before November 1, 1966.

Entered by order of the Court.

CARL W. REUSS
Clerk

No. 14,226

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, *Petitioner* v. UNITED MINE WORKERS OF AMERICA, AND DISTRICT 30, UNITED MINE WORKERS OF AMERICA, *Respondents*	ORDER OF REFERENCE

Before WEICK, Chief Judge, and PHILLIPS and EDWARDS, Circuit Judges.

Under date of May 20, 1960, this Court entered a consent decree enforcing an order of the National Labor Relations Board issued February 10, 1960. The decree directed that respondents, United Mine Workers of America, and District 30, United Mine *Works* of America, and their officers, agents, representatives, successors and assigns, abide by and perform the directions of the Board contained in said order.

Said order directed that respondents:

"Shall not:

"B. Restrain and coerce employees . . . of any . . . employer engaged in coal mining operations or in processing, transporting and/or distributing coal within the geographical limits of the territorial jurisdiction of District 30, United Mine Workers of America . . . in the exercise of their rights guaranteed them by Section 7 of the Act, by engaging in and or participating in conduct more fully described below:

"(a) Exerting force or committing acts of force and violence against said employees, injuring the person or damaging the property of said employees, threatening said employees by following them in superior numbers, using or threatening to use force or violence against said employees, assaulting employees, attempting to assault employees, threatening them with reprisals, barring their ingress to and egress from their places of employment, preventing them physically from working or in any other manner restraining or coercing them in the exercise of said rights."

Under date of July 8, 1966, the Board filed a Petition for Adjudication in Civil Contempt and for Other Civil Relief against respondents, their officers and agents, particularly J. D. Newberry, C. E. Beane, Joseph Castle, Joseph Davis, Noble Hobbs and Walter Akers, charging them with violating, disobeying and failing and refusing to comply with the aforesaid decree of this Court. Said petition charges respondents with acts of force, violence, intimidation, threats, property damage and assaults resulting in personal injury, in violation of the aforesaid decree of this Court, as follows:

"The UMWA and District 30, their officers and agents, including Beane, Castle, Davis, Hobbs, Akers and Newberry, have violated, disobeyed and failed and refused to comply with and continue to violate

and disobey and fail and refuse to comply with the said decree of this Court, in that at the times hereinafter alleged and within the geographical limits of District 30's territorial jurisdiction they have, committed acts of violence upon, physically assaulted and threatened with violence employees of Terry Elkhorn Mining Company, Inc., employees of M. C. Mahan d/b/a Mahan Coal Company and employees of Harry Wright Construction Company, Inc.—all of said employees being then engaged in processing, transporting and distributing coal within the geographical limits of District 30's territorial jurisdiction—causing physical injury to said employees and inflicting considerable property damage, and have followed said employees in superior numbers and attempted to and did bar the said employees' ingress to and egress from their places of employment, and attempted to and did physically prevent said employees from working and thereby and otherwise in like and related manner have in violation of said decree, restrained and coerced the said employees in the exercise of rights guaranteed by Section 7 of the National Labor Relations Act, as amended; more particularly, petitioner shows as follows:

"A. On or about March 31, 1966, the UMWA and District 30, by approximately 200 to 300 of their officers, agents and members, including and in the presence of respondents Castle and Newberry, massed at the bridge near the intersection of U.S. Route 23 and the road leading to Auxier in Floyd County, Kentucky, parked automobiles across the private access road leading from the Auxier road to the tipple operated at Auxier by Mahan Coal Company and attempted to and did block the entrance to the tipple and otherwise by show of force, violence and intimidation, including threats of violence, did prevent employees including employees of Mahan Coal Company and employees of Terry Elkhorn Mining Company from entering or leaving the tipple. Between 40 and 75 union pickets, led by

respondents Castle and Newberry, went onto the tipple property and ordered M. C. Mahan and his employees to stop working and to shut down operations and otherwise by massed numbers, threats of bodily harm and show of force caused the shutting down of said tipple operation. Thereafter, between 40 and 50 union pickets, led by respondents Castle and Newberry, entered the Lick Branch mine property near Prestonsburg in Floyd County, Kentucky operated by Terry Elkhorn Mining Company and in like manner by massed numbers, threats, show of force and intimidation did forcibly prevent the employees of Terry Elkhorn Mining Company from continuing to work.

"B. On or about April 4, 1966, on and about said tipple property, the UMWA and District 30, by about 150 to 200 officers, agents and members, including and in the presence of respondents Castle, Davis, Hobbs, Akers and Newberry, surrounded trucks driven by employees of Harry Wright Construction Company which were attempting to unload; and demanded that the trucks stop hauling, threatening M. C. Mahan and said employees with physical injury and death if the tipple was not shut down and work ceased; and attempted to and did cause damage to said trucks by breaking off rearview mirrors and scattering nails on the loading site which resulted in flat tires to the trucks; and did by massed numbers, threats, show of force and other intimidation cause the shutting down of said tipple operation.

"C. On or about April 6, 1966, the UMWA and District 30, by about 400 officers, agents and members including and in the presence of respondents Castle, Davis, Hobbs, Akers, and Newberry, massed at said bridge and on or about said tipple property, carrying and displaying heavy clubs, knives, bats, belts and guns, and other wise by show of force, violence, intimidation and threats, attempted to and

did cause the operations at the tipple to be shut down. After the tipple operations were shut down, said officers, agents and members went to the entrance to the Lick Branch Mine and massed at said entrance, throwing rocks and other lethal objects at trucks driven by the employees of Terry Elkhorn Mining Co. and the employees of Harry Wright Construction Co. causing extensive property damage to said trucks and otherwise by show of force, violence and intimidation attempted to prevent said employees from the free ingress to and egress from the Lick Branch Mine. Thereafter, about 100 of said officers, agents and members, accompanied and led by respondent Castle went into the Sun Valley Tipple property operated by Terry Elkhorn Mining Co. in Johnson County, Kentucky, and threatened extensive property damage to said tipple and bodily harm to the employees working at said tipple if the operations were not shut down and by said threats, show of force, violence and intimidation attempted to prevent said employees from continuing to work.

"D. On or about April 7, 1966, the UMWA and District 30, by approximately 100 pickets, including and in the presence of respondents Castle and Newberry, massed at the entrance to the Lick Branch Mine and at the entrance to the Auxier tipple, throwing rocks and other lethal objects at and spreading nails in front of trucks operated by said employees, causing extensive property damage to said trucks and by show of force, threats, violence and intimidation did attempt to cause the mining and tipple operations to be shut down.

"E. On or about April 8, 1966, the UMWA and District 30, by approximately 200 officers, agents and members, including respondents Beane, Castle, Davis, Hobbs, Akers, and Newberry, massed at the entrance to the Lick Branch Mine and the entrance to the Auxier tipple, surrounding, barraging with

rocks and other lethal objects and spreading nails in front of trucks operated by said employees, causing extensive property damage to said trucks.

"F. On or about April 11, 1966, the UMWA and District 30, by about 200 officers, agents and members on or about the entrance to the Lick Branch Mine, caused extensive property damage to trucks and severe personal injury to employees Henry E. Strickland and William A. Rice by throwing rocks and other lethal objects which struck with force said trucks and said employees.

"G. On or about April 19, 1966, the UMWA and District 30, by about 25 of its officers, agents and members at the entrance to the Lick Branch Mine surrounded the truck driven by Harry Wright, throwing rocks and shooting steel ball bearings with slingshots, and caused extensive property damage to said truck and severe personal injury to said Harry Wright.

"H. On or about April 26, 1966, the UMWA and District 30, by approximately 15 officers, agents and members, including and in the presence of respondent Newberry, at the Pure Oil filling station on U.S. Route 23 between Auxier and Prestonsburg, attacked employee James Ratliff who was changing a flat tire on his truck and severely beat him about his head and stomach with a steel pipe, severely injuring his person, and attacked his truck with a sledge hammer and other lethal objects causing extensive property damage to said truck.

"I. From on or about March 31, 1966 to on or about May 10, 1966, the UMWA and District 30 by between 50 and 500 of its officers, agents and members massed at the entrance to the Lick Branch Mine on almost every working day and by show of force, violence, threats and intimidation attempted to and did coerce employees in the exercise of their rights to employment and attempted to force Terry

Elkhorn Mining Company to cease doing business at that location.

"J. From on or about March 31, 1966, to on or about June 6, 1966, the UMWA and District 30 by between 50 and 500 officers, agents and members did mass on and about the Auxier tipple premises did threaten to take any means to shut down said tipple operations, and by show of force, violence and intimidation did cause said operations to be shut down for over seventy-five percent of said period and otherwise attempted to and did coerce employees in the exercise of their rights to employment, and said tipple operations were permanently ceased after May 17, 1966 due to the fact that the tipple property was almost totally destroyed by dynamite or other explosives on or about May 17, May 19 and June 6, 1966."

Under date of July 20, 1966, this Court entered a show cause order against respondents.

Under date of October 7, 1966, this Court entered an order denying respondents' motion to discharge and to vacate the show cause order and to dismiss the Board's petition, and directed that respondents answer the show cause order.

Under date of November 7, 1966, respondents filed an answer denying various factual averments contained in the petition of the Board.

Under date of December 2, 1966, the Board filed a motion for the appointment of a special master and a motion to strike portions of the answer of respondents, which motion was opposed by respondents.

Oral arguments on the petition, answer and the various motions were heard by this Court on December 8, 1966.

Respondents deny that they have disobeyed the decree of this Court. This presents an issue of fact which must be resolved before this Court can act upon the Board's Petition for Adjudication in Civil Contempt.

The Court therefore finds that it is appropriate to designate a Special Master to determine the issues of fact.

It is therefore ORDERED that the Honorable Charles G. Neese, District Judge for the United States District Court for the Eastern District of Tennessee, at Greeneville, Tennessee, be and hereby is appointed Special Master to take testimony and hear evidence relative to the issues of fact hereinabove set forth, and as raised by the petition of the Board, and as denied by respondents; and that the clerk of this Court shall forthwith furnish the Master with a copy of this order. Since the Special Master is a United States District Judge, his oath as District Judge is accepted as his oath as Special Master.

It is further ORDERED that the Master shall have authority, powers and duties as follows:

(a) To hold such hearings as may be reasonably necessary to obtain oral or documentary evidence from witnesses made available by the parties, or under the compelling process of the Master. Such hearings may be held at such place or places as the Master may deem appropriate.

(b) To engage a qualified reporter to take and transcribe the testimony adduced at such hearings. Pending further order of this Court with respect to taxation and assessment of costs, the reporter's charges, when duly billed for, and approved by the Master, shall be paid by the Board, in the first instance.

(c) In accordance with the Federal Rules of Civil

Procedure, to regulate all proceedings in the hearings before him and to do all acts and take all measures necessary or proper for the performance of his duties under this order. He may issue subpoenas to compel the attendance of witnesses and may require the production before him of admissible evidence upon all matters relevant and material to the issues, including the production of books, papers, documents and records. The Master may rule upon the admissibility of evidence, subject to review by this Court upon his report. He may put witnesses on oath and may himself examine them. At the request of either party, he shall make a record of evidence offered and excluded, for review by this Court upon his report.

(d) As soon after the conclusion of the hearings as practicable, the Master shall file with the Clerk of this Court the transcript of the proceedings and of the evidence, and the original exhibits, together with his report thereon and his recommendations as to findings of fact and recommendations as to conclusions of law; a copy of said report and recommendations shall at the same time be served upon the parties. The Master may require the parties to submit, prior to the filing of his report, proposed findings, objections to proposed findings, and briefs, and it is further ORDERED that

(e) Final assessment and allocation of all costs, fees, and expenses involved, including counsel fees, are reserved for further order of the Court.

(f) Upon the filing with the Clerk of the Court of the Master's report and recommendations, the transcript of the proceedings and the original exhibits, the Clerk shall forthwith mail to all parties notice thereof. Within twenty (20) days after such notice, any party may file with this Court and serve upon the other parties

written objections thereto. Within thirty (30) days after the filing of the Master's report and recommendations, and the transcript and exhibits, the petitioner may serve and file a brief. Respondents may file a brief within twenty (20) days after petitioner has filed its brief; and petitioner may file a reply brief within ten (10) days thereafter. This Court will then consider any requests for oral argument.

Action is reserved on the motion of the Board to strike portions of the answer of respondents. All other matters are reserved pending the filing of the report of the Special Master.

Entered by order of the Court.

CARL W. REUSS,
Clerk.

APPENDIX F

STATUTES

18 USCA 401:

"A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

"(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

"(2) Misbehavior of any of its officers in their official transactions;

"(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

Labor Management Relations Act, 1947 [29 USCA]:

Section 6 [29 USCA 106]:

"No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

Section 8(b)(1)(A) [29 USCA 158(b)(1)(A)]:

"b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section

157 of this title: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; . ."

Section 8(b)(7) [29 USCA 158(b) (7)]:

"(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:"

Section 10(e) [29 USCA 160(e)]:

"(e) The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of Title 28. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree en-

forcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive . . Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of Title 28."

Section 10(f) [29 USCA 160(f)]:

"(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside . . Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like

manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive."

Section 10(h) [29 USCA 160(h)]:

"(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by sections 101-115 of this title."

Federal Rules of Civil Procedure:

Rule 52(a):

"(a) EFFECT. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memo-

randum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. . . ."

Rule 53(e)(2):

"(2) *In Non-Jury Actions.* In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application of the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions."

Rule 65(d):

"(d) FORM AND SCOPE OF INJUNCTION OR RESTRAINING ORDER. Every order granting an injunction and restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."